IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

O.P.No.22773 of 2001(J)

PETITIONER:-

M/S.PHILLIPS CARBON BLACK LTD.,
FORMERLY CARBON AND CHEMICALS INDIA LTD.,
39/137-A, KRISHNASWAMY CROSS ROAD,
P.B.NO.3258, KOCHI-35,
REP. BY ITS FINANCIAL CONTROLLER R.V.PRABHU.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.R.MURALIDHARAN (AROOR)

RESPONDENTS:-

1. ASST. COMMISSIONER (ASSMT.),
   COMMERCIAL TAXES,
   SPL. CIRCLE-I,
   ERNAKULAM,
   COCHIN-15.

2. STATE OF KERALA,
   REP. BY CHIEF SECRETARY,
   GOVT. SECRETARIAT,
   THIRUVANANTHAPURAM.

3. DEPUTY TAHSILDAR,
   REVENUE RECOVERY,
   KANAYANNUR TALUK,
   ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER SRI.VINOD CHANDRAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

O.P.NO.22773 OF 2001

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - TRUE COPY OF SANCTIONED SCHEME (WITHOUT ANNEXURES) PREPARED BY THE BIFR DATED 29.6.1994.

EXT.P2 - TRUE COPY OF THE INTERIM ORDER PASSED BY THIS COURT IN CMP.NO.28923/95 IN O.P.NO.16073/95 DATED 13.10.95.

EXT.P3 - TRUE COPY OF ASSESSMENT ORDER PASSED BY THE 1ST RESPONDENT FOR THE YEAR 95-96 (KGST) DATED 29.2.2000.

EXT.P4 - -DO- -DO- 96-97 (KGST) DT.28.2.2000.

EXT.P5 - COPY OF -DO- -DO- FOR THE YEAR 95-96 (CST) DT.29.2.2000.

EXT.P6 - -DO- -DO- 96-97 (CST) DT.28.2.2001.

EXT.P7 - TRUE COPY OF DEMAND NOTICE ISSUED BY THE 3RD RESPONDENT U/S.7 OF THE RR ACT DT.27.7.2001 FOR THE YEAR 95-96.

EXT.P8 - -DO- -DO- -DO- 96-97.

EXT.P9 - TRUE COPY OF ASSESSMENT ORDER PASSED BY THE 1ST RESPONDENT FOR THE YEAR 94-95/KGST DATED 15.3.1999.

EXT.P9(a) - TRUE COPY OF ORDER OF THE 1ST RESPONDENT DATED 8.3.2000.

RESPONDENT'S EXHIBITS:-

NIL.

(TRUE COPY)

H.L.DATTU, C.J. & K.M.JOSEPH, J.

O.P. No.22773 of 2001-J

Dated this the 24th day of October, 2007.

J U D G M E N T

H.L.Dattu, C.J.

A sick industrial unit is before us in this petition filed under Article 226 of the Constitution, inter alia, calling in question the levy of interest by the assessing authority for the assessment years 1994-95, 1995-96 and 1996-97 under the provisions of the Kerala General Sales Tax Act. The short question that would arise for our consideration and decision is how to understand the Scheme evolved by the Board for Industrial and Financial Reconstruction (BIFR for short).

(2). The assessee is a dealer registered under the Kerala General Sales Tax Act. Since the assessee had suffered huge loss in the business, it had approached the BIFR. The Board, after hearing the financial institutions as well as the Kerala State Government has framed a Scheme by its order dated 29-6-1994. Under the Scheme, it has granted 3 year's moratorium for payment of sales tax due under the Act for the assessment years 1994-95, 1995-96 and 1996-97 on interest free basis and further has permitted the sick industrial unit to pay the sales tax due, for the afore-said assessment years in 3 equal annual instalments.

(3). After the expiry of 3 year's period, the assessing authority has issued demand notices, inter alia, directing the petitioner/assessee to pay the tax due under the Act with interest at 21 percent. Aggrieved by the said

order passed by the assessing authority, the assessee is before us in this original petition.

(4). Sri.Muraleedharan Nair, learned counsel appearing for the petitioner/assessee would bring to our notice the sales tax deferment scheme passed by BIFR by its order dated 29-6-1994 and then would submit, that, since the assessee had 3 year's time to pay the tax due under the Act and since the assessee has paid it within the time stipulated by the BIFR, the assessing authority was not justified in demanding penal interest at the rate of 21 percent for the delayed payment of tax due under the Act. Therefore, he submits that the order passed by the assessing authority demanding interest is contrary to the Scheme evolved by the BIFR, in the petitioner's case. Per contra, the learned Government Pleader (Taxes) would submit that, after the completion of 3 year's period as envisaged under the Scheme evolved by the BIFR, the assessee ought to have paid the tax due under the Act on 29-6-1997, 29-6-1998 and 29-6-1999 and since there was delay in payment of the tax due under the Act for the afore-said years, the assessing authority was justified in demanding the penal interest at 21 percent under the Kerala General Sales Tax Act.

(5). In order to appreciate the contentions canvassed by the learned counsel for the parties to the lis, a reference to the Scheme evolved by the BIFR requires to be noticed. It is as under:

"To defer sales tax payable by the company for 3 years on an interest free basis from the date of sanction of Scheme . The sales tax so deferred to be repaid in 3 equal annual instalments with a moratorium of 3 years from the date of sanction of scheme."

(6). An analysis of the afore-said clause in the Scheme is as under:

The sick industrial unit is permitted 3 year's moratorium from payment of sales tax dues for the assessment years 1994-95, 1995-96 and 1996-97 and the deferment so made is on interest free basis. The sales tax so deferred requires to be paid in 3 equal instalments. That only means that the taxes due under the Act for the afore-said assessment years requires to be paid in three equal annual instalments and it does not mean that the assessee can pay tax due for the afore-said assessment years after the expiry of one year from the date of moratorium. If the contention canvassed by the Sri.N.Muraleedharan Nair, learned counsel appearing for the petitioner is accepted, then the assessee would be paying the tax due under the Act not in 3 equal annual instalments, but it would be getting, in fact, 4 years for payment of the tax due under the Act. The construction that the learned counsel wants us to accept, in our opinion, is not permissible, in view of the unambiguous language employed by the BIFR while granting sales tax deferment to the petitioner.

(7). In our opinion, 3 year's period would end on 29-6-1997 that

is 3 years from the date of sanction of the Scheme. Petitioner/assessee was expected to have paid the first instalment due on 29-6-1997 and if there is delayed payment of the annual instalment, then the authorities under the Act would be at liberty to demand interest for belated payment of the annual instalment. In that view of the matter, in our opinion, the assessing authority was fully justified in demanding interest at the rate of 21 percent for the belated payment of tax due under the Act.

(8). In view of the above discussion, we are of the opinion that the assessing authority has not committed any irregularity or impropriety in passing the impugned order. Therefore, interference with the said order is not called for. Accordingly, the original petition requires to be rejected and it is rejected. In the facts and circumstances of the case, the parties are directed to bear their own costs.

(9). In view of the order passed in the original petition C.M.P.No.37273 of 2001 is dismissed.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

MS/DK